

Appl. No. 10/813,704

Amdt. Dated June 20, 2006

Reply to Office Action of March 21, 2006

### REMARKS

This is a full and timely response to the non-final Office action mailed March 21, 2006. Reexamination and reconsideration in view of the foregoing amendments and following remarks is respectfully solicited.

Claims 1, 3-13, 15-23, and 25-27 are pending in this application, with Claims 1, 11, and 23 being the independent claims. Claims 1, 11, and 23 have been amended herein, and Claims 2, 14, and 24 have been canceled. No new matter is believed to have been added.

Before proceeding to the merits of the Office action, Applicants wish to note that the specification has been amended herein to delete reference numeral 300 from paragraph [0025], since this reference numeral is not included in any of the drawings.

### Objections to the Drawings

The drawings were objected because FIGS. 1 and 3 allegedly illustrate only "that which is old." Office action at 2. In support of this, the Office action cites one of Applicants' own co-pending applications, which includes the same illustrations. Specifically, the Office action cites co-pending U.S. Patent Application No. 10/822,017, which was filed on April 8, 2004, nine days after the instant application. Thus, what is illustrated in FIGS. 1 and 3 of the instant application and the co-pending application does not qualify as prior art under 35 U.S.C. § 102, and therefore is not prior art, and need not and will not be labeled as such in the drawings.

Applicants respectfully request reconsideration and withdrawal of the drawing objection.

### Obviousness-type Double Patenting

Claims 1-27 were rejected on the grounds of non-statutory obviousness-type double patenting as allegedly being unpatentable over Claims 1, and 3-35 of co-pending U.S. Patent Publication No. 20060054074 and U.S. Patent No. 6,575,248 (Zang et al.). While not conceding the propriety of this rejection, Applicants nonetheless include herewith a Terminal Disclaimer, thereby obviating this rejection. Applicants have

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additionally amended independent Claims 1, 11, and 23 to be consistent with the amendments made to the independent claims in the co-pending application, and not in view of any prior art.

Hence, reconsideration and withdrawal of the obviousness-type double patenting rejection is requested.

#### Rejections Under 35 U.S.C. § 103

Claims 1-27 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Zhang. This rejection is respectfully traversed.

In delineating the above-noted rejection, the Office action alleges that the claims include statements of intended use or field of use, namely the phrase "adapted to." The Office action further alleges that this clause is essentially a recitation of the manner or method in which the claimed apparatus is intended to be used, and therefore does not differentiate the claimed apparatus from the art. In support of this allegation, the Office action references various cases that are cited in M.P.E.P. §§ 2114, 2115, and 2111.02. However, as will now be explained, Applicant submits these sections of the M.P.E.P. and the cases cited therein must be read in concert with other case law and M.P.E.P. sections regarding functional language recited in claims. Applicant further submits that the claims do not include mere statements of intended or desired use, and that the claims actually do recite structure that is distinguishable from the prior art.

First of all, it is well-settled that "[t]here is nothing inherently wrong with defining some part of an invention in functional terms." M.P.E.P. § 2173.05(g). Moreover, a claim is not improper merely because it includes functional language. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). Functional terms that are included within claims cannot be summarily ignored or dismissed. Instead, the M.P.E.P. dictates that functional terms, just like all other claim terms, must be evaluated and considered for what the terms convey to a person of ordinary skill in the pertinent art, and in the context in which such terms are used. M.P.E.P. § 2173.05(g).

In addition, Applicant submits that the pending claims do not include mere recitations of intended or desired use. For example, although the independent Claims 1

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and 11 do recite a controller that is “‘adapted to’ receive a UUV docking signal that indicates at least when the electrical port is electrically coupled to at least a portion of the UUV” it further recites that the controller is “operable, in response [to the received UUV docking signal], to (i) selectively fluidly couple the fuel cell to the fuel source and (ii) selectively electrically couple the fuel cell to the electrical port.” Hence, it is clear that independent Claims 1 and 11 recite a uniquely configured controller, and not just any off-the-shelf processor. As may be readily apparent to any ordinarily skilled artisan, one cannot simply take any particular controller, supply it with the recited signal, and expect it to carry out the stated functions, without specifically configuring the controller to do so.

In this regard, Applicant further notes that Zhang et al. is completely devoid of any teaching or suggestion of a controller that is adapted to receive UUV docking signals and operable, in response to UUV docking signals, to carry out any of the recited functions. Moreover, Zhang et al. fails to teach or suggest determining a state of charge of a battery, and based at least in part on the determined state of charge, selectively supplying the fuel to the fuel cell and selectively electrically coupling the fuel cell to the battery, to thereby recharge the battery to a predetermined state of charge, nor any circuits or devices for implementing these functions, as is now recited in independent Claims 1, 11, and 23.

In view of the foregoing, Applicant requests reconsideration and withdrawal of the above-noted § 103 rejections.

### Conclusion

Based on the above, independent Claims 1, 11, and 23 are patentable over the citations of record. The dependent claims are also deemed patentable for the reasons given above with respect to the independent claims and because each recite features which are patentable in its own right. Individual consideration of the dependent claims is respectfully solicited.

The other art of record is also not understood to disclose or suggest the inventive concept of the present invention as defined by the claims.

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Hence, Applicant submits that the present application is in condition for allowance. Favorable reconsideration and withdrawal of the objections and rejections set forth in the above-noted Office action, and an early Notice of Allowance are requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

If for some reason Applicant has not paid a sufficient fee for this response, please consider this as authorization to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

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